NO. 85-454

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, ET AL
Petitioners,

VS.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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48 pp

QUESTION PRESENTED

Whether, under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), state or federal principles of *forum non conveniens* apply in federal diversity actions.

LIST OF INTERESTED PARTIES

SAUL MUNOZ SIBAJA and RAFAELA ARRIETA PORRAS, ROBERTO CERDA AGUILAR and SINAI TORRES ROSALES, VICENTE FLORES VALVERDE and MARIA MAYELA VEGA FIGUREROA, BOLIVAR ARIAS MORA, ALFONSO CAMPOS RODRIGUEZ and MARIA JIMENEZ BENAVIDES, JUAN BAUTISTA VASQUEZ and MARIA ISABEL CHAVARRIA SALAS, VICTOR SOLIS ROJAS and ROSA BADILLA PEREZ, MIGUEL CHAVARRIA ZUNIGA, JOAQUIN ZAMORA ARRIETA, TACITO CAMPOS GARCIA and YAMILETH NURIS VILLEGAS DIAS, SEGUNDA RODRIGUEZ RODRIGUEZ and MARY ELIZONDO UMANA, ELIECER ACOSTA MONTERO and EMMA JIMENEZ RAMIREZ, MANUEL CHAVES NUNEZ and MIREYA RODRIGUEZ RODRIGUEZ, CARLOS GARITA SANDI and MELITINA GONZALES, EDWIN GOMEZ CASTRILLO and ODILI TORRES ACUNA, MAGIN FERNANDEZ GARCIA and PAULA CORTEZ GOMEZ, MEFTALI ARAYA GARITA and LEDA ESPINOZA GAMBOA, MARGARITO ZUNIGA GUTIERREZ and ANAIS SANCHEZ ROJAS, DANIEL LORIA MORERA and PETRA BERTA NAVARRETE TORRES, MIGUEL ZUNIGA PENA and MARIA DE LA CRUZ GONZALES GONZALES, ISAIAS SANCHEZ RIVERA and FIDELIA ALVARADO SOLORZANO, AUGUSTO LEITON RODRIGUEZ and MERCEDES RODRIGUEZ ARRIETA, ANGEL LOBO ROJAS and MARGOT VARELA RAMIREZ, CASIMIRO LOPEZ SANDOVAL and ALEJANDRINA VEGA VILLALOBOS, JOSE SOSSA SOSSA and FLORY ALFARO JIMENEZ, ANTONIO GUTIERREZ ZUMBADO and MARIA DE LOS ANGELES, GERARDO PERAZA GARRO and NELLY UMANA ARIAS, ELIAS HERNANDEZ BADILLA, BENEDICTO CAMPOS CORRALES, MARIO SOLANO JIMENEZ, BOLIVAR ARIAS MORA,

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, ET AL
Petitioner,

vs.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Petitioners pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this action on April 16, 1985, petition for rehearing thereof having been denied May 23, 1985.

OPINIONS BELOW

The opinion of the Eleventh Circuit in this case appears as *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir. 1985). (Appendix pp. 1-9). Rehearing of that opinion was denied, at 765 F.2d 154. (Appendix pp. 10-11).The unpublished order of the District Court for the Southern District

of Miami appear in the Appendix attached hereto. (Appendix pp. 12-18).

JURISDICTION OF THIS COURT

The judgment of the Court of Appeals for the Eleventh Circuit was entered on April 16, 1985. Rehearing was denied by that court on May 23, 1985. This Petition for Writ of Certiorari is hereby filed within 90 days of the denial of rehearing. This Court's jurisdiction is invoked under 28 U.S.C. §1254(1).

STATUTE INVOLVED

This case involves application of the Rules of Decision Act 28 U.S.C. § 1652 (1982), which provides:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as the rules of decision in civil actions in the courts of the United States, in cases where they apply.

STATEMENT OF THE CASE

Petitioners are Costa Rican agricultural workers who claim to have been sterilized as a result of their exposure to pesticides manufactured by Dow Chemical Company and Shell Oil Company (hereinafter "Dow" and "Shell" respectively). These workers filed suit in Florida state court seeking recovery of damages under product liability theories of negligence, strict liability in tort and implied warranty.

Dow and Shell removed this action to federal court on

June 1, 1983. Following removal, each manufacturer filed a Motion to Dismiss or, in the Alternative, Motion to Transfer. These Motions to Dismiss were predicated upon the federal doctrine of *forum non conveniens* and, in the alternative, 28 U.S.C. §1404(a), the federal provision for transfer of venue.

Petitioners promptly filed a Motion for Extension of Time within which to respond to Defendants' Motions to Dismiss. Although not conceding that the federal doctrine of *forum non conveniens* was a proper focus, Petitioners requested that they be given the opportunity to receive Defendants' answers to all outstanding discovery requests and to utilize those answers in formulating responses to Defendants' Motions.

Petitioners filed Motions to Compel Discovery and a Response to Defendants' Motions to Dismiss within the period prescribed by the trial court. The Plaintiffs' Response to Defendants' Motions was twofold. First, Petitioners contended that under *Erie Railroad Company v. Tompkins*, 304 U.S. 64 (1938), state rather than federal principles of *forum non conveniens* applied and compelled a denial of Defendants' Motions. Secondly, Petitioners contended that, absent discovery on the factual issues raised by Dow and Shell, Petitioners were unable to respond to the manufacturers' arguments concerning the federal rule of *forum non conveniens*.

The Motions to Compel Discovery were never ruled upon by the trial court. However, on August 25, 1983, the trial court granted Defendants' Motions to Dismiss (Appendix pp. 12-18) holding that federal principles of *forum non conveniens* applied and that, under the facts adduced, those principles required dismissal. Petitioners perfected their appeal to the United States Court of Appeals for the Eleventh Circuit on September 21, 1983. Oral

argument was heard on August 3, 1984. On April 16, 1985 the Eleventh Circuit affirmed the trial court's judgment. *Sibaja v. Dow Chemical Co.*, 757 F.2d 1215 (11th Cir. 1985). (Appendix pp. 1-9). Rehearing was denied by the Eleventh Circuit on May 23, 1985. 765 F.2d 154. (Appendix pp. 10-11).

The facts in this case are not in dispute for purposes of this petition. The only issue to be determined is a legal one: Whether, under application of the *Erie* doctrine, this case should be tried on the merits under the dictates of the Florida law of *forum non conveniens*, or dismissed under the federal common law principle.

REASONS FOR GRANTING THE WRIT

A. THIS CASE REPRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS BEEN RECOGNIZED BUT NOT DECIDED BY THIS COURT.

Review of this case is urged to resolve a far-reaching legal question repeatedly recognized but not heretofore decided by this Court, *viz*., whether, under *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) state or federal principles of *forum non conveniens* apply in diversity actions.

On four occasions this Court has endeavored to crystalize the doctrine of *forum non conveniens* as a matter of federal common law. *Piper Aircraft Co. v. Reyno* 454 U.S. 235 (1981); *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947); *Koster v. Lumberman's Mutual Casualty Co.*, 330 U.S. 518 (1947); *Williams v. Greenbay and Western R. Co.*, 326 U.S. 549 (1946). At each turn, this Court has recognized that a significant *Erie* question is presented where state and federal rules of *forum non conveniens* diverge, but has refrained from resolving the issue:

> In previous *forum non conveniens* decisions, the Court has left unresolved the question whether under *Erie R. Co. v. Thompkins*, 304 U.S. 64 (1938), state or federal law of *forum non conveniens* applies in a diversity case. *Gilbert*, 330 U.S. at 509; *Koster*, 330 U.S. at 529; *Williams v. Greenbay & Western R. Co., supra*, at 551, 558-559. The Court did not decide this issue because the same result would have been reached in each case under federal or state law. The lower courts in these cases

> reached the same conclusion: Pennsylvania and California law on *forum non conveniens* dismissals are virtually identical to federal law. [Citation omitted] Thus, here also, we need not resolve the *Erie* question.

Piper Aircraft Co. v. Reyno, 454 U.S. at 248, n.13.

In contrast to the *forum non conveniens* cases previously decided by this Court, the instant case directly presents the *Erie* paradigm. The law of the State of Florida *precludes* a *forum non conveniens* dismissal of this action. For, the Supreme Court of Florida considers it a "fundamental interest" of the State to resolve controversies involving Florida citizens.

> If venue has been properly established because one of the parties is a resident of this state, then *the suit may not be dismissed because another state may be more appropriate.* We believe the certainty of resolution of the dispute outweighs the possible benefits achieved by dismissal in favor of a more convenient forum. *This state has a fundamental interest in resolving controversies involving its citizens.*

Houston v. Caldwell, 359 So.2d 858, 861 (Fla. 1978) (emphasis added). *See also, Seaboard Coastline R. v. Swain*, 362 So.2d 17, 18 (Fla. 1978); *Waite v. Summit Leasing & Capital International Corp.*, 441 So.2d 185, 186 (Fla.Dist. Ct.App. 1983).

The federal common law doctrine, on the other hand, authorizes discretionary dismissal upon balancing the rela-

tive convenience of the litigants and the forum. *E.g., Piper Aircraft Co. v. Reyno*, supra.

In upholding the application of federal rather than state principles of *forum non conveniens* in the case below, the Eleventh Circuit permitted the accident of diversity of citizenship to constitute the deciding factor in whether this case is dismissed or tried to verdict. Such a holding stands in defiance of *Erie* and its progeny. Had the Eleventh Circuit undertaken the *Erie* analysis prescribed by this Court, a different legal conclusion would necessarily have resulted.

In *Hanna v. Plumer*, 380 U.S. 460 (1965), this Court explicitly rejected a "litmus paper" approach to determining the substantive or procedural nature of a rule of law under *Erie*. What is "substantive" for *Erie* purposes can only be determined through application of the analysis set forth in *Hanna*:

> The line between "substantive" and "procedure" shifts as the legal context changes. "Each implies different variables depending upon the particular problem for which it is used." *Guaranty Trust Co. v. York* [326 U.S. 99 (1945)]; Cook, The Logical and Legal Basis of the Conflict of Laws, pp. 154-183 (1942). It is true that both the Enabling Act and the *Erie* rule say, roughly, that federal courts are to apply state "substantive" law and federal "procedural" law, but from that it need not follow that the tests are identical. For they were designed to control very different sorts of decisions. When a situation is covered by one of the Federal Rules, the question fac-

> ing the Court is a far cry from the typical, relatively unguided *Erie* choice.

Hanna v. Plumer, 380 U.S. at 471.

Prior to *Hanna*, in *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), this Court had devised an "outcome determinative" test in concluding that state statutes of limitation, although procedural in some contexts, are "substantive" for *Erie* purposes. "The nub of the policy that underlies *Erie Railroad Co. v. Tompkins* is that for the same transaction the accident of a suit by a non-resident litigant in a federal court instead of a state court a block away should not lead to a substantially different result." *York*, 326 U.S. at 109.

The test of *York* was then refined in *Hanna*. There it was determined that in the absence of a Federal Rule of Civil Procedure or Federal Statute directly on point, the state rule of law is to apply in federal diversity cases if its application: (1) is outcome determinative *and* (2) furthers the twin aims of the *Erie* Doctrine. "The 'outcome-determination' test therefore cannot be read without reference to the twin aims of the *Erie* rule: discouragement of forum shopping and avoidance of inequitable administration of the laws." *Hanna*, 380 U.S. at 468.

The viability of the *Hanna* test was recently reiterated by this Court in *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980) where it was reasoned that state rules of service of summons could not be replaced by federal common law doctrine in the absence of a congressionally mandated federal rule.

> It is sufficient to note that although in this case failure to apply the state service law

> might not create any problem of forum shopping the result would be an "inequitable administration" of the law. *Hanna v. Plumer*, 380 U.S. 468. There is simply no reason why, in the absence of a controlling federal rule, an action based on state law which concededly would be barred in the state courts by the state statute of limitations should proceed through litigation to judgment in federal court solely because of the fortuity that there is diversity of citizenship between the litigants. The policies underlying diversity jurisdiction do not support such a distinction between state and federal plaintiffs, and *Erie* and its progeny do not permit it.

Walker, 740 U.S. at 753.

In an attempt to escape the clear applicability of *Hanna*, the Eleventh Circuit below concluded, with no citation of authority,that although state law in this case "*may* qualify" as substantive law under *Hanna* , such is not the case "under the circumstances presented here." 757 F.2d at 1219. By so stating its result, the appellate court revealed its total failure to grasp the essential holding of the *Hanna* decision. Whether the Florida law of *forum non conveniens* law is "substantive" or "procedural" for *Erie* purposes is a conclusion that can be reached *only* after applying the analysis prescribed by this Court.

Without question, the application of the federal common law doctrine of *forum non conveniens* is outcome determinative in this case. This fact was recognized by the Eleventh Circuit below. *Sibaja*, 757 F.2d at 1219. More importantly, however, the imposition of the federal doctrine in light of the Florida Supreme Court's rule to the contrary, fosters

forum shopping and promotes inequitable administration of the laws. Yet this critical inquiry was overlooked by the Eleventh Circuit.

Forum shopping between state and federal court is certainly encouraged by application of the federal doctrine of *forum non conveniens* in this case. Obviously, the chasm existing between federal and Florida doctrine was a major consideration in the Defendants' decision to remove to federal court. This type of forum shopping can be prevented *only* through application of Florida principles of *forum non conveniens* in this diversity action.

The decision below also works to encourage an inequitable administration of the laws. As the Eleventh Circuit recognized, the accident of diversity constitutes *the* deciding factor in the whether this lawsuit is tried to verdict or dismissed. In effect, the appellate court has thus rewarded the Defendants for manipulating diversity jurisdiction to their advantage by virtue of the federal removal statute. Such a consequence is foreign to the concept of diversity jurisdiction as initially conceived, *see, e.g.*, The Federalist, No. 80 (Hamilton), and as interpreted by this Court in *Erie* and its progeny.

The Eleventh Circuit has simply not applied the *Erie* doctrine to this case. In so doing, it not only rendered a decision in defiance of this Court's prescribed analysis, but inexplicably usurped the power of the State of Florida to determine which of its residents can be brought to trial. The State of Florida's "fundamental interest in resolving controversies involving its citizens," *Houston v. Caldwell*, 359 So.2d at 861, was disregarded by the court below for the sake of federal administrative convenience in controlling its crowded docket. *Sibaja*, 757 F.2d at 1218. Such an

encroachment on the power of the State of Florida cannot be condoned within our federal system. *Erie* tolerates no such result. The *Erie* question left open by this Court on previous occasions, must be resolved within the context of this case.

B. THIS CASE PRESENTS A FUNDAMENTAL ERROR OF LAW OF EXCEPTIONAL IMPORTANCE REQUIRING THIS COURT'S POWER OF SUPERVISION BECAUSE THE ELEVENTH CIRCUIT AUTHORED AN UNPRECEDENTED *ERIE* RULE THAT CONFLICTS WITH PRIOR ANNUNCIATIONS OF THE DOCTRINE.

In lieu of analyzing the *Erie* question presented by this case in accordance with this Court's precedent, the Eleventh Circuit below set forth the following conclusions of law:

> [T]he trial court's decision, under the circumstances presented here, whether to exercise its jurisdiction and decide the case was not a decision going to the character and result of the controversy. Rather, it was a decision that occurred before, and completely apart from, any application of state substantive law. *A trial 'court only reaches the state rule of decision, relating to the character and result of the litigation, once it has decided to try the case and determine whether the plaintiff has a valid claim for relief.* We hold, accordingly, that the district court's application of the doctrine of *forum non conveniens* in this case did not operate as a state substantive rule of law and thus transgress *Erie's* constitutional prohibition.

Sibaja, 757 F.2d at 1219. (emphasis supplied, footnote omitted).

By so stating, the Eleventh Circuit has introduced a global *Erie* principle allowing federal courts to disregard the whole of state law until it is determined that the case will be tried on the merits. This sweeping pronouncement is bereft of any precedential support and conflicts with the prior pronouncement of this Court and the various circuits.

Indeed, under *Erie*, state law is routinely applied in federal court before any determination is made to hear a case on the merits. The application of state rules concerning personal jurisdiction under *Erie* provides a vivid example. While this Court has yet to rule on the issue, there is concurrence among the circuits that under *Erie*, "[a] federal district court sitting in diversity has personal jurisdiction over the defendant to the extent permitted by state law." *Rubaii v. Lakewood Pipe of Texas, Inc.*, 695 F.2d 541, 543 (11th Cir. 1983).[1] Yet, certainly, a trial court must reach the state rule of decision on jurisdiction before "it has decided

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1. For United States Court of Appeals opinions applying state jurisdictional law in federal diversity suits, *see, e.g., Wyatt v. Kaplan*, 686 F.2d 276, 285 (5th Cir. 1982); *Mountaire Feeds, Inc. v. Argo Impex, S.A.*, 677 F.2d 651, 653 (8th Cir. 1982); *Donahue v. Far Eastern Air Transport Corp.*, 652 F.2d 1032, 1036 (D.C. Cir. 1981); *Lakeside Bridge & Steel v. Mountain State Const. Co., Inc.*, 597 F.2d 596, 598 (7th Cir. 1979), *cert. denied*, 445 U.S. 907; *Intermeat, Inc. v. American Poultry, Inc.*, 575 F.2d 1017, 1020 (2nd Cir. 1978); *Amba Marketing Systems, Inc., v. Jobar Intern, Inc.*, 551 F.2d 784, 789 (9th Cir. 1977); *Davis H. Elliot Co., Inc. v. Caribbean Utilities Co., Ltd.*, 513 F.2d 1176, 1179 (6th Cir. 1975); *Quarles v. Fuqua Industries, Inc.*, 504 F.2d 1358, 1361 (10th Cir. 1974); *Pujol v. United States Life Ins. Co.*, 396 F.2d 430 (1st Cir. 1968)

to try the case and determine whether the Plaintiff has a valid claim for relief." *Sibaja*, 757 F.2d at 1219. Indeed, jurisdictional questions must arise, if at all, *before* any issue regarding *forum non conveniens*, since the doctrine of *forum non conveniens* assumes that jurisdiction and venue are properly established. *Piper Aircraft Co. v. Reyno*, supra. Thus, under the reasoning of *Sibaja*, the Eleventh Circuit would rewrite the law of the circuit courts and find personal jurisdiction a matter to be decided under *federal* rather than state principles in diversity cases: A concept that finds no support in federal law.

There can be no rational basis for treating so differently the concepts of jurisdiction and *forum non conveniens* under *Erie*. Indeed, the two concepts are inextricably related as each reflects a well-considered state policy regarding when a state will afford a forum for litigation which may not have maximum contact with the state. Moreover, although it is fully understood that Congress *could* promulgate a federal rule of personal long arm jurisdiction and dismissal for *forum non conveniens*, in each instance it has refrained from doing so. As Judge Friendly convincingly wrote for an en banc sitting of the Second Circuit in *Arrowsmith v. United Press International*, 320 F.2d 219, 226 (2nd Cir. 1963):

> Despite contrary intimations as to our position in the dissent, *we fully concede that the constitutional doctrine announced in Erie Railroad v. Tompkins* (citation omitted), *would not prevent Congress or its rule-making delegate from authorizing a district court to assume jurisdiction over a foreign corporation in an ordinary diversity case although the state court would not;*

* * *

> *But we do find no federal policy that should lead federal courts in diversity cases to override valid state laws as to the subjection of foreign corporations to suit, in the absence of direction by federal stature or rule.* State statutes determining what foreign corporation may be sued, for what, and by whom, are not mere whimsy; like most legislation they represent a balancing of various considerations - for example, affording a forum for wrongs connected with the state and conveniencing resident plaintiffs, while avoiding the discouragement of activity within the state by foreign corporations. *We see nothing in the concept of diversity jurisdiction that should lead us to read into the governing statutes a Congressional mandate, unexpressed by Congress itself to disregard the balance thus struck by the states.*

Arrowsmith at 226. (emphasis supplied).

Nowhere in the shadow of *Erie* is there any justification for the conclusion below that state law may be set aside in federal court prior to determining the validity of the plaintiff's clain for relief. This Court's recent holding in *Walker v. Armco Steel Corp.*, 446 U.S. 740 (1980) is but one example highlighting the misguided notion proffered by the Eleventh Circuit. In *Walker*, it was determined that state service of process rules - a far cry from the merits of the claim presented - were applicable in federal diversity actions. "The reasons for the application of such a state service requirement in a diversity action in the absence of a conflicting federal rule are well explained in *Erie* . . . and need

not be repeated here." *Id.* at 753.

State door-closing rules are frequently recognized in federal court as the basis for denying a federal forum even where the state rule has no bearing on whether the plaintiff has a valid substantive claim for relief. *See, e.g., Ragan v. Merchants Transfer of Warehouse Co.*, 337 U.S. 530 (1949) (state service of process law prohibits claim in federal court); *Woods v. Interstate Realty Co.*, 337 U.S. 535 (1949) (failure to qualify to do business under state law forecloses claim in federal court). In *Angel v. Bullington*, 330 U.S. 183 (1947), this Court announced that where the State of North Carolina would not maintain jurisdiction over a suit for deficiency judgment, neither should a federal court:

> If North Carolina has authoritatively announced that deficiency judgments cannot be served within its borders, it contradicts the presuppositions of diversity jurisdiction for a federal court in that State to give such a deficiency judgment. North Carolina would hardly allow defeat of statewide policy through occasional suits in a federal court. *What is more important, diversity jurisdiction must follow state law and policy. A federal court in North Carolina, when invoked on grounds of diversity of citizenship, cannot give that which North Carolina has withheld.*

Angel, 330 U.S. at 191-92 (emphasis supplied).

By the same token, a federal court in Florida, sitting in diversity, cannot withhold those rights which Florida has *granted* without a clear mandate from Congress or the Constitution to do so. There can be no justification for

differentiating between state door-closing and door-opening policies in this regard.

The court below curtly concluded that Florida law of *forum non conveniens* need not be honored in a federal diversity case because application of the federal judge-made doctrine does not operate as "state substantive law." In so doing, it assumed that the state "rules of decision" to be followed in federal diversity actions are those rules of law concerning the validity of a plaintiffs cause of action. *Sibaja*, 757 F.2d at 1219. It thus equated the *merits* of the case with state *substantive* law citing *Guaranty Trust Co. v. York*, 326 U.S. 99, 109 (1945), for support. *York* says no such thing. In fact, *York* clearly rebukes such conclusory reasoning:

> *Erie Railroad Co. v. Tompkins*, has been applied with an eye alert to essentials in avoiding disregard of state law in diversity cases in federal courts. A policy so important to our federalism must be kept free from entanglement with analytical or terminological niceties.
>
> Plainly enough, a statute that would completely bar recovery in a suit if brought in a state court bears on a state-created right vitally and not merely formally or negligibly. *As to consequences that so intimately affect recovery or non-recovery a federal court in a diversity case should follow state law.*

Id. at 110. (emphasis supplied).

By merging the concept of a "valid claim for relief" with "state substantive law" under *Erie*, the Eleventh Circuit carefully acted to avoid the clear direction of the Rules of Decision Act, 28 U.S.C. §1652 (1982). That statute provides:

> The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as the rules of decision in civil actions in the courts of the United States, in cases where they apply.

28 U.S.C. §1652 (1982).

Clearly, state "substantive law" to be applied under *Erie* does not refer only to state law defining a claim for relief. *E.G. Walker v. Armco Steel Corp.*, supra; *Hanna v. Plumer*, supra; *Angel v. Bullington*, supra; *Guaranty Trust v. York*, supra; *Rubaii v. Lakewood Pipe of Texas*, supra; *Arrowsmith v. United Press Int'l.*, supra. In a case such as this, where there is no Congressional or Constitutional mandate to apply the federal doctrine of *forum non conveniens*, and where the law of Florida, based on the state's fundamental interest in resolving controversies among its citizens, directly conflicts with the federal common law doctrine, *Erie* requires application of state law as the qualified rule of decision. This is so because substitution of the federal doctrine determines the outcome of this case and fosters forum shopping as well as the inequitable administration of the laws. *Hanna v. Plumer*, supra. (See discussion, Section A, above). This is further so, even though reference to the Florida rule of *forum non conveniens* - like that of personal jurisdiction - is made before any decision as to the validity of Plaintiffs' underlying claim for relief. *See Rubaii*, supra; *Arrowsmith*, supra. To hold otherwise undermines the

federalist principles protected by the *Erie* doctrine.

The opinion of the Eleventh Circuit below erroneously characterized the *Erie* doctrine by redefining its terms. Grant of certiorari is requested to correct this fundamental error of law.

CONCLUSION

For the reasons stated, Petitioner respectfully submits that the writ prayed for should issue.

Respectfully submitted,

BARON & BUDD
A PROFESSIONAL CORPORATION
8333 Douglas Avenue, 10th Floor
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214/369-3605

BY: /s/ Jane N. Saginaw
JANE N. SAGINAW

BY: /s/ Russell W. Budd
RUSSELL W. BUDD

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari have been forwarded to the following attorneys for Respondents, via regular mail on this the 14th day of August, 1985.

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APPENDIX A

Saul Munoz SIBAJA, Rafaela Arrieta Porra, et al.,
Plaintiffs-Appellants,

v.

DOW CHEMICAL COMPANY, et al.,
Defendants-Appellees.

No. 83-5655.

United States Court of Appeals,
Eleventh Circuit.

April 16, 1985.

Before TJOFLAT and VANCE, Circuit Judges, and ATKINS*, District Judge.

PER CURIAM:

The district court dismissed this diversity case under the doctrine of *forum non conveniens.* The plaintiffs appeal, claiming that the *Erie*[1] doctrine required the court to apply the state *forum non conveniens* rule which would have precluded the dismissal. We affirm.

I

The plaintiffs are fifty-eight Costa Rican agricultural workers. They claim to have been sterilized as a result of

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* Honorable C. Clyde Atkins, U.S. District Judge for the Southern District of Florida, sitting by designation.

1. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

their exposure in Costa Rica to pesticides manufactured by either Dow Chemical Company or Shell Oil Company. In May 1983, they sued these companies in Florida state court, seeking damages under product liability theories of negligence, strict liability in tort and implied warranty. The Florida court had personal jurisdiction over the defendants because they were qualified to transact business in the State of Florida. Fla. Stat. § 48.091 (1983).[2]

The defendants removed the case to the U.S. District Court for the Southern District of Florida, pursuant to 28 U.S.C. § 1332(a)(2) (1982), and, thereafter, moved to dismiss the action on the ground of *forum non conveniens*. They argued that the plaintiffs should prosecute their claims in the courts of Costa Rica: the plaintiffs are Costa Rican citizens; they were injured in Costa Rica; and substantially all of the evidence and witnesses are in Costa Rica. Furthermore, Florida's choice of law rule would require the district court to apply the substantive law of Costa Rica.

The plaintiffs, in response, argued that the *Erie* doctrine requires a federal district court, sitting in a diversity case, to apply the state *forum non conveniens* rule rather than the federal rule. Florida precludes the dismissal of an action under the doctrine, where one of the parties is a resident, *Seaboard Coastline Railroad v. Swain*, 362 So.2d 17, 18 (Fla.1978); *Houston v. Caldwell*, 359 So.2d 858, 861 (Fla. 1978); *Waite v. Summit Leasing & Capital International*

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2. Dow Chemical Company and Shell Oil Company are major international corporations. They are subject to jurisdiction over their persons in the courts of every state and several foreign countries, including Costa Rica. The plaintiffs chose to sue them in Florida.

Corp., 441 So.2d 185, 185 (Fla. Dist. Ct. App.1983);[3] therefore, the plaintiffs continued, the district court transgressed the *Erie* rule in dismissing the action.

[1,2] The district court, after weighing the traditional *forum non conveniens* factors,[4] concluded that the convenience of the parties, the witnesses and the court, and

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3. The other states of the Union would, apparently, apply the doctrine and dismiss the case under the circumstances presented here. *See, e.g., Alcoa Steamship Co. v. M/V Nordic Regent*, 654 F.2d 147, 155 n. 10 (2d Cir.1980) ("[a]pparently the only state where the court of last resort has continued to reject the doctrine [of *forum non conveniens*] as a matter of law is Florida").

4. The district court applied the federal *forum non conveniens* doctrine as set forth in *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 67 S.Ct. 893, 91 L.Ed. 1055 (1947), and *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). In *Gulf Oil Corp. v. Gilbert*, the Supreme Court provided a list of "private interest factors," affecting the convenience of the litigants, and a list of "public interest factors, " affecting the convenience of the forum, to guide the trial court's application of the doctrine. The private interest factors include the "relative ease of access to sources of proof availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." 330 U.S. at 508, 67 S.Ct. at 843. The public interest factors include the admininstrative difficulties flowing from court congestion; the "local interest in having localized controversies decided at home"; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty. *Id.*, at 509, 67 S.Ct. at 843. *See also, Koster v. Lumbermens Mutual Casualty Co.*, 330 U.S. 518, 67 S.Ct. 828, 91 L.Ed. 1067 (1947).

the interests of justice, dictated that the case be dismissed, and it granted the defendants' motion.[5] in appealing, the

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5. The district court explained how the factors established by the Supreme Court to guide its *forum non conveniens* inquiry warranted dismissal of the action as follows:

> Applying these considerations to the case at bar, the Court finds that the considerations overwhelming weigh in favor of dismissal. The private interests are hampered in that the alleged injuries occurred in Costa Rica. All the plaintiffs are Costa Rican. Most of the evidence and witnesses are in Costa Rica and none are in Florida and compulsory process would not be available to compel production of this evidence or the attendance of these witnesses. The cost of obtaining the evidence from Costa Rica would be substantial, if possible. The defendants would not be able to implead potential third party defendants located in Costa Rica in this action in Florida. And, as was the case in *Piper Aircraft*, the Plaintiffs have not offered any specific reason showing the convenience of their choice.
>
> As to the public interest factors, this case is essentially fifty eight different law suits with different elements of damages, negligence, contributor negligence etc. It could not help but congest this Court's docket more than it would that of a Court at the situs of the injury simply because of the logistics of dealing with fifty eight different Plaintiffs at this distance. It would force the Court to conduct a complex exercise in comparative law and consider a foreign law with which the Court is not familiar and which is in a foreign language. The avoidance of such comparisons is one of the objectives of the doctrine of *forum non conveniens*. It would require local jurors to hear and decide a dispute that has no connection with this community. And, finally, the the Defendants have asserted that Costa Rica offers the Plaintiffs an alternative forum with an adequate remedy, an assertion that has not been rebutted by the Plaintiffs.

(Citations omitted.)

plaintiffs do not dispute the district court's interpretation of the doctrine, as it has been applied in the federal courts. and they do not dispute the court's weighing of the relevant factors. They also do not dispute that this case presents a paradigm for the invocation of the doctrine. Their argument is, purely, that *Erie* requires the application of the state rule because this is a diversity case.

II

[3] The doctrine of *forum non conveniens* authorizes a trial court to decline to exercise its jurisdiction, even though the court has venue, where it appears that the convenience of the parties and the court, and the interests of justice indicate that the action should be tried in another forum. The doctrine derives from the court's inherent power, under article III of the Constitution, to control the administration of the litigation before it and to prevent its process from becoming an instrument of abuse, injustice and oppression. As the Supreme Court observed nearly 100 years ago, "the equitable powers of courts of law over their own process, to prevent abuses, oppression, and injustice, are inherent and equally extensive and efficient." *Gumbel v. Pitkin*, 124 U.S. 131, 144, 8 S.Ct. 379, 383,31 L.Ed. 374 (1888). *See also Pueblo De Taos v. Archuleta*, 64 F.2d 807, 813 (10th Cir.1933); I. J. Moore, J. Lucas, H. Fink, D. Weckstein, & J. Wicker, Moore's Federal Practice ¶ 0.60[6] (2d ed. 1984). *Cf. Ownbey v. Morgan*, 256 U.S. 94, 110, 41 S.Ct. 433, 438, 65 L.Ed. 837 (1921) (inherent power of state court).

[4,5] The doctrine of *forum non conveniens* is but one manifestation of that inherent power. The doctrine addresses "whether the actions brought are vexatious or oppressive or whether the interests of justice require that the trial be had in a more appropriate forum." *Koster v. Lumbermens*

Mutual Casualty Co., 330 U.S. 518, 530, 67 S.Ct. 828, 834-35, 91 L.Ed. 1067 (1947); *see Williams v. Green Bay & W.R. Ca.*, 326 U.S. 549, 555-56, 66 S.Ct. 284, 287, 90 L.Ed. 311 (1946). Under the federal standard, "dismissal will ordinarily be appropriate where trial in the plaintiff's chosen forum imposes a heavy burden on the defendant or the court, and where the plaintiff is unable to offer any specific reasons of convenience supporting his choice." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 249, 102 S.Ct. 252, 262, 70 L.Ed.2d 419 (1981).

The court's inherent power to protect the integrity of its process through *forum non conveniens* is similar to the court's inherent power to punish contempt. Of the latter, the Supreme Court has written:

> It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress; but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted.

Michaelson v. United States, 266 U.S. 42, 65-66, 45 S.Ct. 18, 20, 69 L.Ed. 162 (1924). We think this statement applies with equal force to the authority of a federal district court to dismiss an action for want of an appropriate forum.

The Court's interest in controlling its crowded docket also provides a basis for the Court's inherent power to dismiss

on grounds of *forum non conveniens*: "the chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems.'" *Piper Aircraft Co. v. Reyno*, 454 U.S. at 241, 102 S.Ct. at 258 (quoting *Koster v. Lumbermens Mutual Casualty Co.*, 330 U.S. at 524, 67 S.Ct. at 831-32). "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-09, 67 S.Ct. 839, 843, 91 L.Ed. 1055 (1947). The *forum non conveniens* doctrine is "designed in part to help courts avoid conducting complex exercises in comparative law," *Piper Aircraft Co.*, 454 U.S. at 251, 102 S.Ct. at 263, an exercise the court below would have to undertake if it litigated this case on the merits.

The plaintiffs acknowledge, as they must, the court's inherent power to dismiss a case for the purposes expressed in the doctrine. They insist, however, that *Erie* precludes a court from invoking this power if its invocation would control the "outcome" of the parties' controversy.

The *Erie* rule holds that neither Congress nor the courts have the constitutional authority to promulgate the substantive rule of law that controls the controversy in a diversity case:

> There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a state whether they be local in their nature or "general," be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts.

Erie Railroad v. Tompkins, 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed; 1188 (1938). See also *Bernhardt v. Polygraphic Company of America*, 350 U.S. 198, 202, 76 S.Ct. 273, 275, 100 L.Ed. 199 (1956). It is obvious that the district court here, in deciding the merits of the defendants' motions to dismiss, did not explicitly promulgate a state common law rule. The question thus becomes whether the court did so by implication. We think not.

We recognize that the application of the federal, rather than the state, *forum non conveniens* rule alters the outcome of this case. Under Florida law, the plaintiffs would litigate their claims to a conclusion on the merits; under federal law, they are precluded from reaching the merits. They are, in effect, consigned to the Costa Rican courts for trial. This does not mean, however, that, in dismissing their case, the federal court fashioned a state substantive rule in violation of *Erie*.

[6,7] The *forum non conveniens* doctrine is a rule of venue, not a rule of decision. The doctrine provides "simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of [the law]." *Gulf Oil Corp. v. Gilbert*, 330 U.S. at 507, 67 S.Ct. at 842. In contrast, "rules of decision" are the "substantive" law of the state, the "legal rules [which] determine the outcome of a litigation." *Guaranty Trust Co. v. York*, 326 U.S. 99, 109, 65 S.Ct. 1464, 1470, 89 L.Ed. 2079 (1945). It is true that a judge-made rule *may* qualify as a rule of decision if it substantially affects the "character or result of a litigation." *Hanna v. Plumer*, 380 U.S. 460, 467, 85 S.Ct. 1136, 1141, 14 L.Ed.2d 8 (1965). But the trial court's decision, under the circumstances presented here, whether to exercise its jurisdiction and decide the case was not a decision going to the character and result of the controversy. Rather, it was a decision that occurred before, and

completely apart from, any application of state substantive law. A trial court only reaches the state rule of decision, relating to the character and result of the litigation, once it has decided to try the case and determine whether the plaintiff has a valid claim for relief. We hold, accordingly, that the district court's application of the doctrine of *forum non conveniens* in this case did not operate as a state substantive rule of law and thus transgress *Erie's* constitutional prohibition.[6] The judgement of the district court is therefore

AFFIRMED.

WEST KEY NUMBER SYSTEM

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6. The plaintiffs claim that the district court's action violated the Rules of Decision Act, 28 U.S.C. § 1652 (1982), is plainly foreclosed by the foregoing analysis. That act provides:

> The laws of the several states, except where the Constition or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

APPENDIX B

UNITED STATES COURT OF APPEALS

Eleventh Circuit

DENIALS OF REHEARING EN BANC

(Rule 35 Federal Rules of Appellate Procedure; Local Eleventh Circuit Rule 26)

Group 1 – Denials where no member of the panel nor Judge in regular active service on the Court requested that the Court be polled on rehearing en banc.

Group 2 – Denials after a poll requested by a member of the panel or a Circuit Judge in regular active service.

Group 3 – Denials on the Court's own motion after a poll requested by a member of the panel or a Circuit Judge in regular active service.

Title	Docket Number	Date of Denial	Citation of Panel Decision
GROUP 1			
Bud Antle, Inc. v. Eastern Foods, Inc.	84-8106	6/5/85	S.D.Ga., 758 F.2d 1451
E.E.O.C. v. Atlanta Gas Light Co	84-8051	6/3/85	N.D.Ga., 751 F.2d 1188
E. Remy Martin & Co., S.A. v. Shaw-Ross Intern. Imports, Inc.	84-5212	6/6/85	S.D.Fla., 756 F.2d 1525
Francois v. Wainright	83-5775 85-5430	5/28/85	S.D.Fla., 763 F.2d 1187
Goldstein v. Manhattan Industries, Inc.	84-7233	5/30/85	N.D.Ala., 758 F.2d 1435
Sibaja v. Dow Chemical Co	83-5655	5/23/85	S.D.Fla., 757 F.2d 1215
Tyler v. Kemp	84-8213	6/4/85	N.D.Ga., 755 F.2d 741
U.S. v. Willis	83-7651	6/4/85	M.D.Ala., 759 F.2d 1486
Young v. Kemp	84-8408	6/7/85	M.D.Ga., 760 F.2d 1097
GROUP 3			
Ford v. Wainwright	84-5372	6/3/85	S.D.Fla., 752 F.2d 526

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 83-1347-CIV-JLK

SAUL MUNOZ SIBAJA and
RAFAELA ARRIETA PORRAS, et. al.,
Plaintiffs,

vs.

DOW CHEMICAL COMPANY and
SHELL OIL COMPANY

ORDER DISMISSING CAUSE

THIS CAUSE comes before the Court upon the Defendants' Motions to Dismiss.

In support of their motions to dismiss the Defendants have argued that this cause should be dismissed on the ground of forum non-conveniens. In support of that argument, they have asserted:

> 1. that each individual plaintiff was allegedly exposed to the product in question in Costa Rica;
> 2. that the evidence and witnesses, including all of the 58 Plaintiffs, are primarily located in Costa Rica;
> 3. that most of this evidence and these witnesses would not be subject to the compul-

sory process of this Court;
4. that even if such evidence and witnesses were made available voluntarily, the cost involved would be substantial;
5. that the witnesses and evidence within the United States are in places other than the Southern District of Florida and so would be just as obtainable in Costa Rica as in Florida;
6. that the Florida law of conflicts would apply the Costa Rican substantive law, which is in a foreign language unfamiliar to this Court;
7. that this cause of action has no contact with the Southern District of Florida and that the Public interest in providing a forum in Florida is out weighed by the costs of court congestion and jury duty;
8. that the judicial system of Costa Rica does provide a forum and a remedy for the Plaintiffs and both Defendants are subject to the jurisdiction of the Costa Rican judicial system or will submit to that jurisdiction;
9. and, that the application of the doctrine of forum non conveniens is within the sound discretion of the Court.

For support of their argument, the Defendants rely on *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), and *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947).

In their response to the motion to dismiss the Plaintiffs' argue that a major objective of *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), was to avoid the unequal administration of the laws and the forum shopping that had previ-

ously been caused by the diversity jurisdiction of the Federal Courts. The Plaintiffs argue that to facilitate this objective the *Erie* Court attempted to minimize the variations between state and federal law as it would be applied in diversity cases. The argument then asserts that under Florida law this action could not be dismissed on the ground of forum non-conveniens because the Defendants are residents of Florida.

Because the doctrine of forum non-conveniens would not be available in this case if it were in State Court the Plaintiffs' would have this Court distinguish this case from *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981), relied on by the Defendants, and then apply the Florida Law of forum non-conveniens. The distinction that the Plaintiffs would have this Court make is that in *Piper* the state law of forum non-conveniens was the same as the federal law of non-conveniens while that is not the situation here.

The Court, having considered the arguments of the parties and being fully advised, finds that the law as stated in *Piper Aircraft*, 454 U.S. 235, and *Gilbert*, 330 U.S. 501, governs this case. The Court finds further that application of the factors listed in *Piper Aircraft* and *Gilbert* to the case at bar requires that the motions to dismiss be granted.

The doctrine of *forum non-conveniens* is simply a tool that a court may use to resist imposition upon its jurisdiction is authorized by the letter of the law. General venue statutes are generally drawn to allow a plaintiff a choice of forums and Plaintiffs may be tempted to abuse their right to choose. *Gilbert*, 330 U.S. at 507. While the Plaintiffs choice of forums is usually assumed to be a convenient forum, that assumption is less reasonable and entitled to less weight when the Plaintiff is foreign. *Piper Aircraft*, 102 S. Ct. at 266. The determination of the *forum non-conveniens* question is within the sound discretion of the

trial court and when it is based on a reasonable consideration of the *Gilbert* factors, it will not be disturbed. *Piper Aircraft*, 102 S. Ct. at 266.

The pertinent factors for consideration, as detailed in *Gilbert*, are:

1. the private interests of the litigants:
   a. the relative ease of access to sources of proof;
   b. availability of compulsory process for attendance of unwilling witnesses;
   c. the cost of obtaining the attendance of witnesses;
   d. the possibility of viewing the premises concerned;
   e. and, all other practical problems that make trial of a case easy, expeditious and inexpensive;
2. the public interest:
   a. congestion of the court docket;
   b. the burden of jury duty for a case that has little or no relation to the community;
   c. the application of the law by a forum that is familiar with the law which governs the case.

Gilbert, 330 U.S. at 508.

In addition, the Court in *Piper Aircraft* considered the availability of an alternative forum that could exercise jurisdiction and offer the Plaintiffs a remedy; the inability to implead potential third party defendants in one jurisdiction; and, the added burden imposed on the Defendant as compared to the added convenience to be

realized by the Plaintiffs. 102 S. Ct. 252.

Applying these considerations to the case at bar, the Court finds that the considerations overwhelming weigh in favor of dismissal. The private interests are hampered in that the alleged injuries occured in Costa Rica. All the Plaintiffs are Costa Rican. Most of the evidence and witnesses are in Costa Rica and none are in Florida and compulsory process would not be available to compell production of this evidence or the attendance of these witnesses. The cost of obtaining the evidence from Costa Rica would be substantial, if possible. The Defendants would not be able to implead potential third party defendants located in Costa Rica in this action in Florida. And, as was the case in *Piper Aircraft*, the Plaintiffs have not offered any specific reason showing the convenience of their choice.

As to the public interest factors, this case is essentially fifty eight different law suits with different elements of damages, negligence, contributory negligence etc. It could not help but congest this Court's docket more than it would that of a Court at the situs of the injury simply because of the logistics of dealing with fifty eight different Plaintiffs at this distance. It would force the Court to conduct a complex exercise in comparative law and consider a foreign law with which the Court is not familiar and which is in a foreign language. The avoidance of such comparisons is one of the objectives of the doctrine of *forum non conveniens*. *Piper Aircraft*, 102 S.Ct. at 263. It would require local jurors to hear and decide a dispute that has no connection with this community. And, finally, the Defendants have asserted that Costa Rica offers the Plaintiffs an alternative forum with an adequate remedy, an assertion that has not been rebutted by the Plaintiffs.

The Plaintiffs contend that this Court must allow further discovery before it decides the issue of *forum non conveniens*. But the Court in *Piper Aircraft* found that a detailed inquiry into the facts was not necessary and, in fact would defeat the purpose of the doctrine. 102 S. Ct. at R7. As in *Piper Aircraft*, the Defendants here have moved for dismissal precisely because many crucial witnesses are located beyond the reach of the compulsory process of this Court and are thus difficult to identify or interview. The record contains the unrebutted allegations of the Defendants as to the difficulties caused by this choice of forum as well as affidavits substantiating such difficulties, this information is sufficient for the Court to adequately consider the *Gilbert* and *Piper Aircraft* factors.

As to the Plaintiffs' contention that state law should apply, the Court agrees with the statement of the United States District Court for the Southern District of Ohio in *in re Richardson-Merrell, Inc.*, 545 F.Supp. 1130 (S.D. Ohio 1982):

> [G]iven the discretionary nature of the *forum non conveniens* inquiry and the factors established by the Supreme Court to guide such a determination, it would appear anomalous for the Court to apply anything but federal principles.

545 F.Supp. at 1132.

> And:
>
> Most of the 'public interest factors' affecting the convenience of the forum relate peculiarly to the *court* in which the case is pending, rather than to the state in which the federal

court is located.

id. at n.3.

Accordingly, the Court does:

ORDER and ADJUDGE that the Defendants' Motions be, and they are, GRANTED. This cause is DISMISSED.

DONE and ORDERED in chambers at the United States Courthouse Miami, Dade County, Florida this 25th Day of August, 1983.

JUDGE JAMES LAWRENCE KING
JAMES LAWRENCE KING
U.S. DISTRICT JUDGE